

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL BOLDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C07-5619RBL

ORDER

THIS MATTER comes on before the above-entitled Court sua sponte. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

On or about November 1, 2007 Mr. Bolds filed a motion he characterized as a motion pursuant to Fed. R. Civ. P. 60(b)(3). On or about November 23, 2007 this Court directed the United States to file an answer to the motion utilizing the procedures set forth in the rules to respond to motions pursuant to 28 U.S.C. §2255. Believing that the Court acted in error and recharacterized his motion as one pursuant to 28 U.S.C. §2255, Mr. Bolds filed a Notice of Appeal. Thereafter, on or about December 18, 2007 he filed with the Ninth Circuit Court of Appeals an emergency motion for an interlocutory appeal and motion for a stay. Because the Ninth Circuit had not opened an appeal on Mr. Bolds' behalf (due to the lack of a certificate of appealability), the Ninth Circuit forwarded the motion to this Court.

Contrary to Mr. Bolds' position, this Court has not recharacterized his motion pursuant to Fed. R. Civ. P. 60(b)(3) as a motion pursuant to 28 U.S.C. §2255. The Court has merely directed the government to

1 respond to the motion utilizing the procedures set forth in the rules to respond to motions pursuant to 28
2 U.S.C. §2255. After reviewing the government's response, the Court will determine whether Mr. Bolds'
3 motion should be considered as a motion pursuant to 28 U.S.C. §2255. If the Court so determines, Mr. Bolds
4 will be given the opportunity to withdraw his motion before the Court rules on the motion's merits. The
5 schedule as set forth in this Court's previous order [Dkt. #3] remains. The Clerk shall forward to the Ninth
6 Circuit Court of Appeals Mr. Bolds' emergency motion for an interlocutory appeal and for a stay.

7 Furthermore, the Court declines to issue a certificate of appealability on Bolds' Notice of Appeal [Dkt.
8 #56] because he has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C.
9 §2253(c)(2).

10 The Clerk shall send uncertified copies of this order to all counsel of record, to any party appearing
11 pro se, and to the Ninth Circuit Court of Appeals.

12 **IT IS SO ORDERED.**

13 Dated this 8th day of January, 2008.

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16 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE